

**STATE OF OHIO, WARREN COUNTY
COMMON PLEAS COURT
CRIMINAL DIVISION**

STATE OF OHIO,

Plaintiff,

v.

BROOKE SKYLAR RICHARDSON

Defendant

CASE NO. 17CR33292

(JUDGE ODA)

**ENTRY AND ORDER DENYING
MOTION TO RELEASE GRAND
JURY TESTIMONY FOR IN
CAMERA REVIEW AND MOTION
TO DISMISS INDICTMENT**

This matter is before the Court on the Motion to Release Grand Jury Testimony for In Camera Review and Motion to Dismiss Indictment. The State has opposed the motion.

A defendant may raise by motion any defense, objection, evidentiary issue or request that is capable of determination without the trial on the general issue, including a defense and/or objection based on the institution of the prosecution. Crim.R. 12(C). However, these motions must be made in a timely manner. Crim.R. 12(D) requires these motions be made within thirty-five days from the date of the arraignment, or seven days before trial, whichever is earlier. The arraignment in this matter was on August 7, 2017.

The Defendant provides no explanation in her motion why she has waited until less than six weeks before trial to present this pretrial motion – particularly in light of the fact that this is the second time the matter has been set for trial. The Court finds the Motion to Dismiss is untimely and is hereby **DENIED**.

Even assuming the Court were to consider the motion as timely filed, the Court finds that it is not well-taken. In *Holt v. United States*, 218 U.S. 245, the United States Supreme Court was called upon to decide whether an indictment should be quashed because it was supported, in part, by incompetent evidence. The court refused to hold that such an indictment should be quashed, stating:

If indictments were to be held open to challenge on the ground that there was inadequate or incompetent evidence before the grand jury, the resulting delay would be great indeed. The result of such a rule would be that before trial on the merits a defendant could always insist on a kind of preliminary trial to determine the competency and adequacy of the evidence before the grand jury. This is not required by the Fifth Amendment. An indictment returned by a legally

constituted and unbiased grand jury, like an information drawn by the prosecutor, if valid on its face, is enough to call for trial of the charge on the merits.


See also *State v. Davis* (1988), 38 Ohio St.3d 361, 528 N.E.2d 925.

The Court is not going to extrapolate from emails exchanged between these experts that Dr. Murray is recanting her prior opinion. Even assuming this were the case, the Defendant does not allege that the prosecuting attorney intentionally presented false information to the grand jury. At best, the evidence in support of the motion shows that the expert's opinion may have shifted based on subsequent review. This is not sufficient to revisit the indictment, nor to release the grand jury testimony.

The Motion to Release Grand Jury Testimony for In Camera Review is **DENIED**.

The Motion to Dismiss is **DENIED**.

SO ORDERED.



Donald E. Oda II, Judge

Warren County Common Pleas Court

C: Charles M. Rittgers, Esq.
Charles H. Rittgers, Esq.
Steve Knippen, Asst. Prosecutor
Julie Kraft, Asst. Prosecutor